

Tax Alert

HK Motors Kenya Limited v. Commissioner of Customs & Border Control

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The Tax Appeals Tribunal (Tribunal) delivered its judgment on 20 April 2023 in Tax Appeal No 478 of 2021: HK Motors Kenya Limited v. Commissioner of Customs & Border Control. The dispute related to the classification of motor vehicle units destined for assembly in Kenya for customs purposes.

We provide below a summary of the facts of the case and our analysis.

The taxpayer's business is importation and assembly of multiple brands of motor vehicles, and operating an assembly plant and a customs bonded warehouse. While importing prime movers and tipper trucks for assembly in Kenya, the taxpayer classified the imported units as unassembled under tariff headings 8701.20.10, 8704.22.10 and 8716.39.10. These tariff headings attract import duty at the rate of 0% under the East African Community Common External Tariff (EAC CET).

The Kenya Revenue Authority (KRA) conducted a post clearance audit (PCA) on the taxpayer's affairs. Following the PCA, the KRA alleged that the imported units could not be classified under the declared tariff headings since the units did not

qualify as Completely Knocked Down (CKD) units pursuant to the provisions of the Tax Procedures (Unassembled Motor Vehicles and Trailers) Regulations, 2019. According to the KRA, only CKD units as determined under the Regulations qualified as unassembled or disassembled for the purposes of preferential import duty treatment (the 0% import duty rate) under the EAC CET. Consequently, the KRA reclassified the prime movers and tipper truck units imported by the taxpayer for assembly in Kenya under tariff headings 8701.20.90, 8704.22.90 and 8716.39.90, which attract import duty at the rate of 10%, 25% and 10%, respectively, under the EAC CET. This resulted in the KRA uplifting the import duty, excise duty and Value Added Tax applicable on the imported units.

In its determination, the Tribunal made, among others, the following findings:

- The EAC CET makes no provision for Kenya to introduce its own rules of classification or interpretation of the Harmonised Commodity Description and Coding System, and the Tax Procedures (Unassembled Motor Vehicles and Trailers) Regulations, 2019 cannot be relied upon for the purposes of classification of goods for import duty purposes.
- The terms “completely knocked down” or “semi knocked down”, which refer to the degree of disassembly, are not used in the EAC CET and the East African Community Customs Management Act (EACCMA) and are only used in subsidiary legislation to the Tax procedures Act, 2015 which is not the proper statute for the purposes of classification of goods.

What does this decision mean for you?

This decision is relevant to importers of goods since it reiterates that classification for import duty purposes can only be carried out within the context and confines of the EAC CET. More importantly, the decision reiterates that the EAC customs laws and protocols thereto take precedence over domestic law of the EAC partner states (whether primary or subsidiary) on customs matters as envisaged under section 253 of the EACCMA. The KRA may yet appeal this decision. We will continue monitoring developments on this matter and keep you updated.

For more information on this decision or any other tax matters, kindly get in touch with the team listed under Key Contacts

KEY CONTACTS



Kiragu Kimani SC
[Partner](#)
[+254 20 3258236](tel:+254203258236)
kiragu.kimani@dentons.com



Andrew Warambo
[Partner](#)
[+254 20 3258277](tel:+254203258277)
andrew.warambo@dentons.com



James Kimani
[Associate](#)
[D +254 203 258224](tel:+254203258224)
james.kimani@dentons.com